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**Ms. Jennifer Tomchin**

AUG 28 2002

**Policy Division**

Federal Communication Commission  
Bureau / Office

**Wireless Telecommunications Bureau**

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McGUIREWOODS

August 28, 2002

**VIA HAND DELIVERY**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

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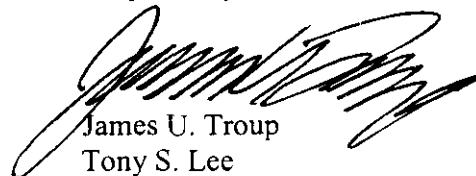
Re: Elkhart Telephone Co., d/b/a Epic Touch Co.  
Petition for Temporary Stay  
CC Docket No. 94-102

Dear Ms. Dortch:

On behalf of Elkhart Telephone Co., d/b/a Epic Touch Co. ("Epic Touch"), transmitted herewith are an original and four (4) copies of a Petition for Temporary Stay of the FCC's Phase II E911 implementation deadlines. Specifically, Epic Touch requests a stay of the rules for network-based location solutions as provided for in the Commission's *Order to Stay* issued in the above-referenced proceeding.<sup>1</sup>

Please acknowledge this filing by date-stamping and returning the extra copy of this submission included for this purpose. Should you have any questions with respect to this matter, please do not hesitate to contact the undersigned.

Respectfully submitted.

  
James U. Troup  
Tony S. Lee

Counsel for Elkhart Telephone Co. d/b/a  
Epic Touch Co.

Enclosures

cc: Lawrence Clance (FCC)  
Jennifer Tomchin (FCC)  
Trent Boaldin

<sup>1</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Order to Stay (rel. July 26, 2002) ("Order to Stay")

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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AUG 30 2002

In the matter of )  
 )  
Revision of the Commission's Rules to Ensure )  
Compatibility with Enhanced 911 Emergency )  
Calling Systems )  
 )  
Phase II Compliance Deadline for Non- )  
Nationwide CMRS Carriers )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 94-102

To: Chief, Wireless Telecommunications Bureau

**PETITION FOR TEMPORARY STAY**

**I. INTRODUCTION**

Elkhart Telephone Co., d/b/a Epic Touch Co. ("Epic Touch"), by its undersigned attorneys, and pursuant to Section 1.3 of the Commission's rules, respectfully petitions the Commission for a stay of the FCC's E911 Phase II compliance deadline for non-nationwide commercial mobile radio service ("CMRS") carriers as provided for in the FCC's recent *Order to Stay*<sup>1</sup> issued in the above-captioned proceeding. Specifically, Epic Touch requests that the Commission extend the company's compliance deadline as granted to other Tier III carriers<sup>2</sup> in the *Order to Stay* so that it is required to provide Phase II E911 enhanced service to at least 50 percent of its coverage area or population by September 1, 2003, or within six months of a PSAP

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<sup>1</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Order to Stay (rel. July 26, 2002) ("*Order to Stay*").

<sup>2</sup> Epic Touch is a Tier III carrier as defined in the *Order to Stay*. See *Order to Stay* at ¶¶ 23-24.

request, whichever is later; and to 100 percent of Epic Touch's coverage area or population by September 1, 2004, or within 18 months of a PSAP request, whichever is later.<sup>3</sup>

In support hereof, the following is respectfully shown:

## **II. BACKGROUND**

Epic Touch is a small rural carrier licensed to provide PCS service under call sign WPOJ755. The geographic area that Epic Touch covers is BTA 253: Morton, Stevens, Seward, and Meade counties in Kansas, and Texas and Beaver counties in Oklahoma. On November 7, 2000, Epic Touch filed a report informing the FCC that it had chosen to implement a handset GPS solution to comply with the Commission's E911 Phase II automatic location identification ("ALI") requirements. On July 13, 2001, Epic Touch filed a quarterly TTY report and stated that Nokia and Ericsson indicated that they expected to be able to provide location-capable handsets by the Commission's Phase II deadline. To date, Epic Touch has not received any PSAP requests for Phase II E911 service.

Despite assurances from manufacturers that equipment would be available for Epic Touch to implement its handset-based ALI solution by the Commission's deadline, there are no location-capable handsets available for Epic Touch to provide to its subscribers. In order to prevent further unnecessary delays in providing E911 Phase II service to its customers, Epic Touch has determined that it will implement a network-based rather than a handset-based ALI

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<sup>3</sup> In granting an extension of the compliance deadline for Tier III carriers to provide Phase II E911 enhanced service, the Commission's *Order to Stay* refers to the public safety answering point's ("PSAP's") coverage area, rather than the licensee's coverage area as provided for in Section 20.18(f). See *Order to Stay* at ¶ 32. Epic Touch believes that the *Order to Stay* intended to extend the implementation deadlines in Section 20.18(f), and not to also change the area required to be served. To the extent that Epic Touch's understanding is incorrect, the company requests an extension of the compliance deadline to provide E911 Phase II service in its coverage area rather than the area served by the PSAP.

solution. Epic Touch believes that using network-based technology will be in the best interest of its subscribers, particularly when the typical user of its service would likely not be willing to pay the premium associated with the roll-out of a location-capable handset.

Epic Touch now files the instant Request for Stay in order to, among other things, implement its new choice of E911 Phase II technology.

### III. DISCUSSION

Epic Touch fully intends to provide E911 Phase II service to its subscribers, and it believes that in light of the current lack of availability of location-capable handsets to Tier III carriers, a network-based solution is the best option for its customers. There are several vendors that have installed network-based ALI systems in real-world CMRS systems, and these solutions have been shown to comply with the FCC's accuracy requirements. Indeed, the Commission recognized in its *Order to Stay* "that non-nationwide CMRS carriers have much less ability than the nationwide CMRS carriers to obtain the specific vendor commitments necessary to deploy E911 immediately . . . ."<sup>4</sup> Moreover, the Commission concluded that "[n]ationwide carriers' deployment schedules have created downstream delays for Tier II and III carriers," and that there are temporary and special circumstances that constitute a sufficient basis to grant a stay on a limited and temporary basis of the FCC's Phase II deadlines.<sup>5</sup>

As a small rural carrier, Epic Touch has experienced firsthand some of the obstacles the Commission cited as contributing to the inability of Tier III carriers to implement wireless ALI. Due to circumstances beyond its control, vendors did not fulfill their commitments to provide

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<sup>4</sup> *Order to Stay* at ¶ 10.

<sup>5</sup> *Id.* at ¶ 11.

location-capable handsets and other related equipment, and Epic Touch was therefore unable to meet the Commission's E911 Phase II requirements then in effect.

The grant of a temporary stay as called for in the *Order to Stay* is warranted in this case. Epic Touch is similarly situated to the Tier III carriers that the Commission found appropriate to receive a temporary stay of the FCC's Phase II deadlines for network-based solutions. Like many of these carriers, Epic Touch is a small rural carrier that has been unable to focus vendors on the individual needs of its network, particularly in light of the vendors' principal focus on filling orders from nationwide carriers. There are no handset-based ALI technologies available to Tier III providers, like Epic Touch, and the Commission has recognized this reality by granting a stay of its E911 Phase II deadlines.

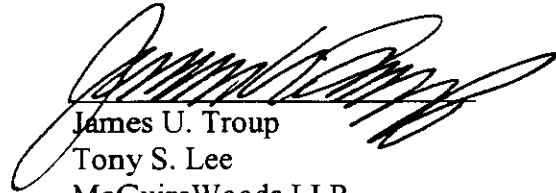
A temporary stay will not unduly delay E911 Phase II implementation in Epic Touch's service area because it has not received a PSAP request for such service. The company is fully committed to providing Phase II E911 enhanced service pursuant to the revised deadline for Tier III carriers in the *Order to Stay*, i.e., at least 50 percent of its coverage area or population by September 1, 2003, or within six months of a PSAP request, whichever is later; and to 100 percent of Epic Touch's coverage area or population by September 1, 2004, or within 18 months of such a request, whichever is later.

#### **IV. CONCLUSION**

WHEREFORE, for the foregoing reasons, Epic Touch respectfully requests that the Commission extend Epic Touch's Phase II compliance deadline as it did for Tier III carriers in the *Order to Stay* so that it is required to provide Phase II E911 service to at least 50 percent of its coverage area or population by September 1, 2003, or within six months of a PSAP request,

whichever is later; and to 100 percent of Epic Touch's coverage area or population by September 1, 2004, or within 18 months of a PSAP request, whichever is later.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James U. Troup", is written over a horizontal line.

James U. Troup  
Tony S. Lee  
McGuireWoods LLP  
1050 Connecticut Avenue, N.W.  
Suite 1200  
Washington, DC 20036  
Phone: (202) 857-1700  
Fax: (202) 857-1737

Date: August 28, 2002

**CERTIFICATION**

I, Trent D. Boaldin, hereby certify under penalty of perjury that I am the President of Epic Touch Co.; that I have read the foregoing document and know the contents thereof; and that the same are true of my own knowledge, except to those matters therein stated upon information and belief, and as to those matters I believe them to be true.

Trent D. Boaldin

Trent D. Boaldin  
President  
Epic Touch Co.

8-27-02

Date